

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS  
EARPLUG PRODUCTS  
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to:  
*Vilsmeyer*, 7:20-cv-113

Judge M. Casey Rodgers  
Magistrate Judge Gary R. Jones

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**ORDER**

This matter is before the Court on Defendants’ Motion for Summary Judgment under Federal Rule of Civil Procedure 56. ECF No. 44. The Court assumes the parties’ familiarity with the general factual allegations and nature of this multidistrict litigation. Luke Vilsmeyer has brought fifteen claims against Defendants under Washington law<sup>1</sup> arising from injuries he alleges were caused by his use of the Combat Arms Earplug version 2 (“CAEv2”) during his military service. *See* Amended Master Form Compl., ECF No. 11.<sup>2</sup> Luke Vilsmeyer’s wife, Christina Vilsmeyer, has filed a claim for loss of consortium. *Id.* Defendants move

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<sup>1</sup> The parties agree Washington law applies to the Vilsmeyers’ claims. *See* ECF No. 30.

<sup>2</sup> Specifically, Luke Vilsmeyer raises claims for Design Defect – Negligence (Count I), Design Defect – Strict Liability (Count II), Failure to Warn – Negligence (Count III), Failure to Warn – Strict Liability (Count IV), Breach of Express Warranty (Count V), Breach of Implied Warranty (Count VI), Negligent Misrepresentation (Count VII), Fraudulent Misrepresentation (Count VIII), Fraudulent Concealment (Count IX), Fraud and Deceit (Count X), Gross Negligence (Count XI), Negligence *Per Se* (Count XII), Consumer Fraud and/or Unfair Trade (Count XIII), Unjust Enrichment (Count XV), and Punitive Damages (Count XVI). ECF No. 11.

for summary judgment on Luke Vilsmeier's claims for negligent design defect (Count I), breach of express warranty (Count V), breach of implied warranty (Count VI), negligent misrepresentation (Count VII), gross negligence (Count XI), negligence *per se* (Count XII), consumer fraud/unfair trade practices (Count XIII), unjust enrichment (Count XV), and punitive damages (Count XVI). ECF No. 44.<sup>3</sup> Defendants also move for summary judgment on Christina Vilsmeier's loss of consortium claim (Count XIV). *Id.* at 7–8. In response, Luke Vilsmeier voluntarily dismisses his claims for negligent design defect (Count I), breach of express warranty (Count V), breach of implied warranty (Count VI), negligent misrepresentation (Count VII), gross negligence (Count XI), negligence *per se* (Count XII), consumer fraud/unfair trade practices (Count XIII), unjust enrichment (Count XV), and punitive damages (Count XVI). ECF No. 87. Christina Vilsmeier also withdraws her loss of consortium claim (Count XIV). *Id.*

Accordingly, Defendants' Motion for Summary Judgment, ECF No. 44, is **MOOT**.

**DONE AND ORDERED** this 2<sup>nd</sup> day of March 2022.

*M. Casey Rodgers*  
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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**

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<sup>3</sup> Defendants do not move for summary judgment on Luke Vilsmeier's claims for design defect – strict liability (Count II), failure to warn – negligence (Count III), failure to warn – strict liability (Count IV), fraudulent misrepresentation (Count VIII), fraudulent concealment (Count IX), and fraud and deceit (Count X). ECF No. 44.